

ADDITIONAL INFORMATION
FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

FEB 1 3 17 PM '96

MM Docket No. 95-109

In the Matter of

Amendment of Section 73.202(b) RM-8665
Table of Allotments
FM Broadcast Stations
(Coolidge and Gilbert,
Arizona)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 13, 1996; Released: March 29, 1996

By the Chief, Allocations Branch:

1. At the request of Rainbow Broadcasting, Inc. ("petitioner"), licensee of Station KBZR(FM),¹ Coolidge, Arizona, the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 7701 (1995) seeking comments on the proposed substitution of Channel 280C2 for Channel 280A at Coolidge, Arizona, the reallocation of Channel 280C2 to Gilbert, Arizona, and the modification of Station KBZR(FM)'s license to specify Gilbert, Arizona, as its community of license.² Petitioner filed supporting comments.³ No other comments were received.⁴

2. As stated in the *Notice*, petitioner's proposal could provide Gilbert with its first local aural transmission service and would not deprive Coolidge of its only local aural transmission service.⁵ Moreover, the existing allotment of Channel 280A at Coolidge is mutually exclusive with the proposed use at Gilbert which is located in the Phoenix Urbanized Area. Therefore, we questioned whether Gilbert should be credited with all of the aural transmission services licensed in the Phoenix Urbanized Area. Petitioner was requested to submit information to show that Gilbert is deserving of such a preference using the Commission's three factors enumerated in *RKO General* (KFRC), 5 FCC Rcd (1990) and *Faye and Richard Tuck*, 3 FCC Rcd 5373 (1988) and *Elizabeth City, North Carolina, and Chesapeake, Virginia* 9 FCC Rcd 3586 (1994). We also noted that while petitioner's proposal will provide service to a larger population, existing service would be deleted from a commu-

nity. Therefore, since we are concerned with the loss of service to Coolidge, we also requested that petitioner submit information showing the areas and populations which will lose existing service if Station KAZR(AM) is upgraded to Channel 280C2 and reallocated to Gilbert as well as the number of reception services which are now available within the gain and loss areas.

3. *Comments.* Petitioner contends that its proposal does not leave Coolidge unserved. Coolidge will continue to receive service from full-time AM Station KCKY. Petitioner argues that the change will result in a net population gain of 1,287,961 and a 3.863 square kilometer land increase within the 60dBu service contour. Petitioner states that Gilbert is not located entirely within the Phoenix Urbanized Area.⁶ Under the first criteria signal-population coverage, petitioner contends that the proposed coverage will not result in a commonality of coverage with the Phoenix stations because it will not be able to provide a 70dBu signal to any part of the city of Phoenix, or provide the same broadcast service as the FM radio stations licensed to Phoenix. Petitioner also notes that the predicted 60dBu signal does not encompass the entire Phoenix Urbanized Area. Petitioner states that this is due to Gilbert's location and distance separation to a station on an adjacent channel in Glendale, Arizona. Under the second criteria size and proximity, petitioner states that Gilbert lies 17.8 miles from Phoenix. Gilbert has a population of 29,000 and its urbanized area population is 0.1% of the total population within the Phoenix Urbanized Area. Gilbert's urbanized land area is 2.7% of the total within the Phoenix Urbanized Area.

4. Under the interdependence criteria petitioner states that Gilbert and its surrounding areas provide the locations for employment of Gilbert residents. Petitioner further states 63% of the working population living in Gilbert worked in Gilbert or communities within a 10 mile radius of Gilbert. Thirteen percent of Gilbert's working population actually worked in Gilbert, where 3,500 to 4,500 people are employed. Only 25% of the Gilbert workforce was actually employed in the central city.⁷ Petitioner states that Gilbert has no broadcast voices, however it does have a daily and two weekly newspapers published in Gilbert. Petitioner submits a statement from the Director of Economic Development for Gilbert which in essence argues that Gilbert is a self sustaining community with all the requisite services. Petitioner also submits that Gilbert has its own government, operating under the Council-Manager form of government. Petitioner states that the government operates on a budget in the excess of \$25 million and provides its citizens with the following services: police, fire, emergency medical services, planning and zoning, schools, libraries and waste water treatment. Petitioner further states that the local telephone directory serves communities to the east and south of Phoenix, including Gilbert. Petitioner also notes that Gilbert has four zip codes dedicated to it.

¹ The call sign for the station was changed from KAZR to KBZR on March 10, 1995. See *Public Notice*, Report No. 250, released March 17, 1995.

² The petition was initially filed by FM 103 Broadcasting, Inc., former licensee of Station KAZR(FM). Rainbow consummated the assignment of license on April 14, 1994 (File No. BALH-940113GJ).

³ The petition for rule making was originally dismissed by letter because Gilbert was located within the Phoenix, Arizona Urbanized Area. Petitioner then filed a petition for rule making and petition for reconsideration nunc pro tunc.

⁴ As a result of a one-step upgrade, effective on February 13, 1995, KBZR(FM) was upgraded to a Class C3 facility. *Public Notice*, Report No. 22089, released February 27, 1995.

⁵ After the pleading cycle ended, supplemental comments were filed by Rainbow Broadcasting, Inc. which were not considered.

⁶ Petitioner notes that only 73.3% of Gilbert's land area and 97.8% of its population lie within the urbanized area of Phoenix.

⁷ This information was taken from a study prepared by the Arizona State University.

5. Regarding local facilities petitioner contends that Gilbert has extensive retail establishments and health facilities among its 900-1,000 businesses. Petitioner submits that Gilbert and other outlying communities are "overlooked and overshadowed" by Phoenix stations. Therefore, Gilbert has been able to support its own daily and weekly newspapers. Petitioner concludes that Phoenix and Gilbert are different media markets each having unique advertising needs. Finally, petitioner contends that there is no reliance on the central city or any regional authority for services.

6. *Discussion.* The proposed substitution of Channel 280C2 for Channel 280A and the reallocation of Channel 280C2 to Gilbert, Arizona was filed pursuant to the provisions of Section 1.420(i) of our Rules, which permits, in limited circumstances, the reallocation of a channel from one community to another and the modification of a station's license to reflect the new community, without competition from other applicants for the newly allotted channel. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification of License R&O"), 4 FCC Rcd 4870 (1989), *recon granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). As indicated in the *Notice*, Gilbert is located in the Phoenix Urbanized Area. As a result, we shall use the criteria established in *Huntington Broadcasting Co. v FCC*, 192 F. 2d 33 (D.C. Cir. 1951), *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck* ("Tuck"), 3 FCC Rcd 5374 (1988) as a guideline in this proceeding to determine whether to attribute the Phoenix transmission services to Gilbert. Under these case, three criteria are considered, signal population coverage, the size of the suburban community relative to the adjacent city, and the interdependence of the suburban community with the central city.⁸

7. With respect to "signal population coverage," Station KBZR(FM) will not be able to place a city grade signal over any part of the Phoenix Urbanized Area. As for size and proximity, Gilbert has a 1990 Census population of 29,188. Gilbert lies 17.8 miles from the city of Phoenix. The Phoenix Urbanized Area has a 1990 Census population of 2,006,239.

8. With respect to the third criteria, interdependence between the smaller city and the central city of the metropolitan area, "this will vary depending on the degree to which the relative size and proximity of the two communities suggests that the community is a mere appendage of the central city." 5 FCC Rcd at 3223, 3225 n.6. After reviewing the eight factors we have traditionally examined in making this determination, we conclude that the weight of the evidence indicates that Gilbert is sufficiently independent from the Phoenix Urbanized Area to warrant treating it as distinct from that area and we not attribute the Phoenix transmission services to Gilbert. Petitioner has shown that over 60% of the working population living in Gilbert work in Gilbert or within a 10 mile radius. Gilbert

has one daily and two weekly newspapers published locally. Gilbert has its own elected government consisting of a council and city manager which had a 1994-1995 operating budget of over \$25 million. According to Gilbert's Director of Economic Development, Gilbert is a full service community that provides residents with libraries, water and sewer services, and offers its citizens a complete array of parks and recreation programs. Gilbert's police department has almost 60 officers, and its fire department has over 25 firefighters. Gilbert provides a complete range of municipal services for its citizens. The Gilbert Unified School District serves over 14,000 students. Gilbert also has four zip codes. Although Gilbert does not have a local telephone directory, it is served by a regional directory issued by U.S. West which also serves other communities to the east and south of Phoenix but not Phoenix itself. There are approximately 900-1000 commercial businesses and a wide range of health facilities in Gilbert. While public transportation is provided by a regional authority, Gilbert is currently in the process of building a local public transportation system.

9. In light of the above evidence, we conclude that Gilbert although located within the Phoenix Urbanized Area, should be treated as a separate and distinct community and should not be credited with transmission services licensed in the Phoenix Urbanized Area. While factor two may appear to favor attributing the Phoenix stations to Gilbert, the first factor, signal population coverage and the third factor, interdependence of the suburban community to the urbanized area, strongly favor a finding of not attributing the Phoenix stations to Gilbert. As stated in *Tuck*, the size and proximity of the specified community to the central city and signal population coverage are pertinent but less significant than evidence of independence.

10. Having made that decision, we must next determine whether petitioner's proposal would result in a preferential arrangement of allotments. To do so, we must compare the existing and proposed arrangement of allotments using the allotment priorities set forth in Revision of FM Assignment Policies and Procedures.⁹ The allotment of Channel 280C2 to Gilbert would provide Gilbert with its first local aural transmission service, thus triggering priority three while Coolidge already has local transmission service, thus falling under priority four. Further, a staff engineering review of the proposal shows that the allotment of Channel 280C2 to Gilbert would enable Station KBZR(FM) to provide service to an additional 955,865 persons in an area comprising 6,003 square kilometers (2,319 square miles). The reallocation would also cause a loss of service to 35,528 persons in an area of 2,245 square kilometers (867 square miles). While we carefully evaluate any proposal that would result in the loss of reception service the population within the loss area will continue to receive service from at least five full-time aural stations. Thus, we believe that the public interest is better served by providing a first local

⁸ There are eight factors relevant to interdependence: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) telephone company or zip code; (6) whether the community

has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the municipal services such as police, fire protection, schools, libraries. See *KRRC supra*.

⁹ (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight would be given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

transmission service to Gilbert rather than retaining the transmission service at Coolidge. Coolidge will continue to receive local service from full-time Station KCKY(AM). Based on the above information, we find that the public interest would be served by reallocating Channel 280C2 from Coolidge, Arizona to Gilbert, Arizona. Therefore, in accordance with the provisions of Section 1.420(g) and (i) of the Commission's Rules, we will modify the authorization of Station KAZR(FM) to specify operation on Channel 280C2 in lieu of its present authorization on Channel 280C3 at Coolidge.

11. Channel 280C2 can be allotted to Gilbert, Arizona, in compliance with the Commission's minimum distance requirements at petitioner's specified transmitter site, with a site restriction of 28.8 kilometers (17.9 miles) east of the community.¹⁰

12. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 13, 1996** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Coolidge, Arizona	---
Gilbert, Arizona	280C2

13. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the License of Station KBZR(FM)(File No. BLH-950319KZ, Coolidge, Arizona, IS MODIFIED, to specify operation on Channel 280C2 at Gilbert, Arizona, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed as authorizing any change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

14. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Rainbow Broadcasting, Inc., licensee of Station KAZR(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding contact Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

¹⁰ The coordinates for this allotment are North Latitude

33-22-37 and West Longitude 111-28-55.